IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-06-2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

WRIT PETITION No.40401 OF 2002

Union of India,
rep.by the Divisional Railway Manager,
Chennai Division,
Southern Railway,
NGO Annexe, Park Town,
Chennai-600 003. ...Petitioner

-vs-

1.The Presiding Officer,
Central Government Labour Court,
Chennai.

2.Shri M.Chandran ... Respondent

Petition under Article 226 of the Constitution of India, praying for issuance of a certiorari, to call for the records of the impugned order in CCP No.30 of 1998, dated 25.06.2002, from the files of the Central Government Labour Court and quash the same.

For petitioner : Mr.V.P.Rajendran
For respondent 2 : Mr.L.Chandrakumar

O R D E R

This Writ Petition is filed, challenging the award of the first respondent/Labour Court, dated 25.06.2002, made in CCP No.30 of 1998.

2. The case of the petitioner is as follows :

2.1. It is a part and parcel of Southern Railway, a Central Government Organisation. The second respondent joined the Railway Service as Assistant Station Master in the pay scale of Rs.330-560. After completion of training, the second respondent took up independent duty on 05.11.1976 and, on

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01.01.1983, he was transferred to Madras Division from Madurai Division on mutual request and posted at Padalam Railway Station. Thereafter, he was promoted to the grade of Rs.425-640 and transferred to Jolarpet Junction, where he was promoted to the pay scale of Rs.455-700 with effect from December,1983, and, once again, on personal request, he was transferred to Mambalam Railway Station in November,1985. While so, he was issued transfer orders, transferring him from Mambalam Railway Station to Pudi Railway Station, on administrative grounds and he was served with a relief memo on 13.07.1988. However, he refused to accept the relief memo served to him and, thereafter, he was absconding from duty from 13.07.1988 to 17.06.1989.

2.2. Without joining duty at Pudi Railway Station on 13.07.1988, the second respondent represented to the petitioner to retain him at Mambalam Railway Station and consequently to cancel his transfer orders to Pudi Railway Station. By an order, dated 15.07.1988, the petitioner did not agree to his plea and, instead, directed the second respondent to carryout the transfer orders. Thereafter, on a representation, dated 17.08.1988, by the second respondent to grant him salary from 14.07.1988 onwards, the petitioner, vide a letter dated 25.07.1988, replied that since he had not joined duty at Pudi Railway Station, the question of payment of salary from 14.07.1988 did not arise and that he was entitled to receive salary from 06.07.1988 to 13.07.1988. It was also stated that even though the disbursement of salary for the period from 06.07.1988 to 13.07.1988 would normally have been made only if he had joined Pudi Railway Station, it was disbursed to him, due to his request. Subsequently, the petitioner commenced disciplinary action against the second respondent, by issuing a charge sheet, dated 06.07.1989 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules,1968, for unauthorised absence from service. The second respondent refuted the charges by a letter, dated 18.07.1989. Thereafter, a detailed inquiry was conducted by a duly designated Enquiry Officer.

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2.3. The Enquiry Officer submitted his report, holding the charges as proved. The findings of the Enquiry Officer were accepted by the Disciplinary Authority and, by an order dated 15.02.1990, the second respondent was removed from service with effect from 20.02.1990.

2.4. Against the said removal, the second respondent filed an appeal before the Additional Divisional Railway Manager, Madras, and it was dismissed. The revision petition

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filed by the second respondent was also dismissed. Thereafter, the second respondent filed an original application before the Central Administrative Tribunal and the said Tribunal, by an order, dated 20.04.1995, upheld the order of removal and dismissed the application.

2.5. Thereafter, the second respondent filed a claim petition before the Central Government Labour Court, Chennai, hereinafter referred to as "the Labour Court", namely, the first respondent herein, claiming back wages for the period from 14.07.1988 to 20.02.1990.

2.6. The petitioner herein filed a counter statement, contending, inter alia, that the claim for back wages, having been made after 10 years, was barred by limitation.

2.7. However, the Labour Court, by the order impugned, allowed the claim petition and directed the petitioner to pay a sum of Rs.49,748/-, being back wages from 14.07.1988 to 20.02.1990.

2.8. Hence, this Writ Petition.

3. The case of the second respondent is that he was prevented from discharging duties by serving an order, dated 14.07.1988, and the Labour Court, taking cognizance of the said letter, which could not be disputed by the petitioner, had passed the award, taking into account the factual position by proper appraisal of evidence. The confirmation of penalty of removal by the Tribunal does not have any overlapping effect in regard to the claim petition, as the disciplinary proceedings are entirely different from that of the claim petition. His absence was not unauthorised and, therefore, the basis for the penalty is also unsustainable. The contention that the claim is time barred and without recourse to raising an industrial dispute is an afterthought and it also suffers for want of application of mind, since there is a statutory protection for making a claim petition under the Industrial Disputes Act and the Rules. The other reasons that had weighed in with the Labour Court are well within the ambit of the Rules and Regulations and that of the statutory powers conferred upon it and the order impugned in this Writ Petition neither suffers from any perversity nor any illegality, calling for any interference by this Court, and, therefore, this Writ Petition is liable to be dismissed.

4. Learned counsel for the petitioner would contend that the second respondent, being a Station Master, is not workman under the definition of Section 2 (s) of the Industrial

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Disputes Act and when it is a clear case of the second respondent that he has not worked for the period from 14.07.1988 to 20.02.1990, the petition for wages does not lie before the Labour Court and that the principle of "No work No wage" should be applied to the case of the second respondent, as he was not inclined to join the transferred place. Learned counsel would further contend that on the basis of the order of the Labour Court, the second respondent once again filed O.A.No.1163 of 2004 before the Central Administrative Tribunal for the relief of reinstatement with all consequential benefits and the same is pending and, further, the act of the second respondent in initiating the proceedings before the Labour Court in respect of the subject matter already finalised by a judicial forum is purely an abuse of process of Court and barred by the principle of res judicate and, therefore, the award of the Labour Court is liable to be set aside.

5. Per contra, learned counsel for the second respondent would contend that Section 33 (C) (2) of the Industrial Disputes Act, 1947, does not stipulate a period of limitation and when it is well settled in *Nithyanand M.Joshi and another Vs. The life Insurance Corporation of India and others* (AIR 1970 SC 209) that the scheme of the Indian Limitation Act is that it only deals with applications to Courts and that the Labour Court is not within the limitation Act,1963, the argument of the learned counsel for the petitioner regarding limitation has to be rejected. The learned counsel, relying on a decision of the Punjab and Haryana High Court in *Punjab Agro Industries Corporation Limited Vs. Chandersekar and others*, 2006 (5) SLR P&H 297, would contend that while exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot sit in appeal over the findings of fact rendered by the Labour Court. He would also rely on a decision of the Supreme Court in *Workmen of Firestone Typre and Rubber Co. of India Pvt.Ltd Vs. The Management and others* (AIR 1973 SC 1227) , wherein it was held that "Section 11 A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion ensures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time". Therefore, the Labour Court was correct in overlooking the decision

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arrived at by the Central Administrative Tribunal, based on the evidences collected in the domestic enquiry, since the impugned award was made with reference to the evidences adduced for the first time before the Labour Court. The learned counsel also relied on a decision of the Supreme Court in *Niranjan Umeschandra Joshi Vs. Mrudala Jyoti Rao & Others* in Civil Appeal No.5060 of 2005, dated 15.12.2006, to show that the appellate Court, while exercising its jurisdiction, would ordinarily not interfere with the findings of fact arrived at by the trial Court, if the view taken by it is reasonable. Accordingly, the learned counsel prays for dismissal of this Writ Petition.

6. I have heard the learned counsel for the petitioner and the second respondent and given my thoughtful consideration to the rival submissions and also gone through the records.

7. The paramount questions which arise for consideration in this Writ Petition are, (i) whether the Labour Court has jurisdiction to entertain a claim petition under Section 33 (C) (2) of the Industrial Disputes Act ? and (ii) whether the claim petition is maintainable, after a lapse of 10 years ?

8. Admittedly, the second respondent was removed from service on 20.02.1990 on the charge of unauthorised absence/absconding from duty from 14.07.1988 to 20.02.1990 and, against the said punishment of removal from service, an appeal was filed and the appellate authority rejected the said appeal. Thereafter, the revision petition, filed against the said appeal, was also dismissed. Pursuant to the said revision, the second respondent filed O.A.No.1690 of 1992 before the Central Administrative Tribunal, Chennai, which was dismissed on 28.04.1995, upholding the order of removal from service. Therefore, a finality has reached on the disciplinary proceedings and the subsequent punishment imposed on the second respondent.

9. With regard to the next question, whether the second respondent is entitled for the relief of pay and wages from the period of his absence i.e.,from 14.07.1988 up to the date of removal from service i.e., 20.02.1990, the second respondent moved the Labour Court and an award was passed in the claim petition, directing the writ petitioner to pay a sum of Rs.49,748/- towards back wages, as prayed for. The said order, allowing the claim petition, has now been under challenge by the management/Railway administration.

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10. As already stated, the punishment of removal imposed on the second respondent has reached a finality. Regarding the preliminary question raised in this Writ Petition as to whether the Labour Court is competent to adjudicate the matter under Section 33 (C) (2) of the Industrial Disputes Act, it would be appropriate for this Court to refer to a ruling of the Supreme Court in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, 1995 (1) Supreme Court Cases 235, wherein it was held as follows :

> "12....The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33 (C) (2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33 (C) (2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33 (C) (2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

11. In this case also, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33 (C) (2) of the Act. Hence, the second respondent has to raise an industrial dispute before the appropriate authority, which could be the appropriate forum to adjudicate the matter of dispute with regard to wages.

12. The power of the Labour Court under Section 33 (C) (2) extends only to interpret an award or settlement on which

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the claim is based and it cannot adjudicate the dispute of entitlement or basis of claim of workman. The prayer for adjudication or settlement of a disputed claim of a workman is not maintainable under Section 33 (C) (2).

13. In view of the above settled legal position, the award passed by the Labour Court in adjudicating the dispute and directing the petitioner to pay the amount due to its employee is not in accordance with law. The only course available to the second respondent is to raise an industrial dispute before the competent forum.

14. The points raised by the learned counsel for the petitioner, whether the second respondent is a workman under Section 2 (s) of the I.D.Act and the delay in approaching the Court are all the matters to be decided by the competent Adjudicating Officer. The petitioner management, in its counter statement filed before the Labour Court, has stated that with regard to the claim of wages, the second respondent has to raise an industrial dispute, thereby admitting that the second respondent is a workman and he has to get the matter adjudicated before the the appropriate forum.

15. I am not inclined to go into the said question at this stage. Since the scope of the Labour Court is confined to Section 33 (C) (2) and in view of the ruling of the Supreme Court cited supra, the dispute with regard to the claim of wages has to be raised before the appropriate authority. Therefore, the impugned award of the Labour Court is without jurisdiction and unsustainable. Accordingly, the same is set aside

16. Writ Petition stands allowed, directing the second respondent to raise an industrial dispute before the competent forum within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the period of pendency of the Writ Petition has to be excluded while calculating the period of limitation, for entertaining the dispute. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Presiding Officer,
Central Government Labour Court,
Chennai.

+1cc to Mr.L.Chandrakumar, Advocate Sr 33773
+1cc to Mr.V.P.Rajendran, Advocate Sr 33852

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